BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINION OF COURT BELOW

The opinion of the Court of Appeals of Georgia, is reported in 13 Southeastern Reporter, (2nd) page 868.

II

JURISDICTION.

1. The date of the order and judgment of the Court of Appeals of Georgia, affirming the conviction by the trial Court, is February 11th, 1941. The date of the entry of the judgment of the Court of Appeals of Georgia denying a rehearing is June 18th, 1941.

2. The Statutory provision which is believed to sustain the jurisdiction of this Court, is section 237 (b) of the judicial code as amended by the Act of February 13th, 1925.

3. The Court of Appeals of Georgia passed upon the constitutional question asserted in the trial court and denied such question.

III

STATEMENT OF THE CASE.

This has already been stated in the preceeding petition under, "Summary Statement of Matter Involved."

IV

AUTHORITIES AND ARGUMENT.

It is contended in this case that the question here raised involves a right under a provision of the Con-

stitution of the United States; that is, that the petitioner has been denied one of his rights contemplated by reason of what is known as a Constitutional guaranty of a trial by an impartial jury.

It is essential to faith in the Jury system that Jurors should determine the facts submitted to them wholly on the evidence offered in open Court, unbiased and unprejudiced by anything they may have seen or heard outside of the trial of the case. That faith can be sustained only by keeping our judicial proceedings free from suspicion of wrong. The question is, not whether any actual wrong resulted, but whether it created a condition from which prejudice might arise, or from which the general public would suspect that the jury might be influenced to reach a verdict on the grounds of bias or prejudice:

Stone vs. U. S., 113 Fed. (2nd) p. 70—note 11.

The Court further held in the Stone case:

> "There is no right more sacred than the right to a fair trial. There is no wrong more greivous than its negation."

Recognizing the foregoing as sound, both as a matter of fact and law, we verily believe the petitioner in this case was denied one of his sacred rights under the constitutional provision herein pointed out. The question as to when one has had a trial by a partial Jury is a Constitutional guaranty, which, for a violation thereof the trial would be illegal:

Shettel vs. U. S., 113 Fed. (2nd) p. 36—notes 6-7.

As pointed out in the petition, under rulings of this Court in the cases of *Sayward vs. Denny*, 158 U. S., p. 180; *Powell vs. Brunswick, etc.*, 150 U. S., p. 400 to 433; and *Yazoo & Miss. Valley Ry. Co. vs. Andrews*, 180 U. S., p. 1, the Court of Appeals of Georgia passed upon the Constitutional rights of this petitioner.

The decision of the Court of Appeals of Georgia is in direct conflict with the decisions of the Supreme Court of Georgia in the case of *Thompson vs. State*, 109 Ga., p. 273, in which that court HELD:

> "If, for any reason the impartiality of any one or more of the Jurors whose names appear on the panel is suspected, the proper method to determine the state of feeling of such Juror or Jurors, is by challenge to the polls (that is to question each one of the Jurors) and when thus challenged they may be put on their voir dire. And this is the rule, not only in the trial of criminal cases, where the charge amounts to a felony, but in the trial of misdemeanors as well."

We verily believe that the question being as to the Construction of a rule or principle of law which we consider, and is vital to the defendant's right to a fair and impartial trial as contemplated by the Constitutional provision herein charged, that this Court should review this case under a Writ of Certiorari to the Court of Appeals of Georgia, and thus settle the conflict between the Courts on this question.

The Court of Appeals passed upon the question because in its record and published opinion it held:

> GARDNER, J. The Court did not err in refusing as a proper challenge to the qualifications of

> Jurors to allow the defendant to qualify the Jurors as to whether they had contributed to the lottery investigation held in Fulton County, and whether they had been witnesses before the Grand Jury as to the operation of the lottery known as the number game in Fulton County, Georgia. Such contributions or appearances as witnesses do not ipso facto inherently affect the qualifications of Jurors.

The Court of Appeals of Georgia in the case of *Roberts vs. The State*, 4th Ga. App., p. 378 on this question held:

> A Jury should come to the consideration of a criminal case unaffected by any previous judgment or opinion as to a material fact in the issue to be tried, relating to the parties, the subject matter or credibility of the witnesses. And, it was further held: Where the defendant is on trial for a misdemeanor the Court may ask the statutory questions prescribed for the use in the trial of felony cases, or such other questions as will test the Jurors impartiality. If the Jury, when put on the voir dire qualifies and becomes apparently competent, either the defendant or the State then has the right to put the individual Jurors upon the Court as a trior, and to submit any proof that will tend to illustrate the question of qualifications.
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> *Humphries vs. The State*, 100 Ga. Report, p. 260.
> *Wells vs. State*, 102 Ga., p. 659.

In this connection, it is here contended that the Court of Appeals of Georgia erred in holding and deciding in its original opinion entered in this case, and on the motion for a rehearing therein, that where a person was about to be tried for an alleged violation of the lottery laws of this state, and that prior thereto, there

had been held a Grand Jury investigation in the County in which the trial was to be had, and out of which investigation an indictment was returned against the defendant about to be tried, and for the same identical offense, that it was not error for the trial Court to refuse as a proper challenge to the qualifications of Jurors to allow the defendant to qualify the Jurors as to whether they contributed to the lottery investigation in the County of the trial, and whether they or any of them had been witnesses before the Grand Jury as to the operation of the lottery then under investigation by said Grand Jury, which was the same lottery for which he was about to be placed on trial; and in holding that such contributions or appearances as witnesses would not inherently effect the qualifications of Jurors. This ruling, as we contend, was a violation of the Constitutional rights of the defendant as herein pointed out.

Furthermore, this petitioner verily believes that the effect of the decision of the Court of Appeals of Georgia in this case is to further involve the question here under consideration in serious doubt, in that the decision of the Court of Appeals, on the questions as herein specified is, in effect as petitioner submits, in direct conflict with the decisions of the Supreme Court of Georgia and the Appellate Courts of other States upon the same questions. The confusion and conflict which exists as herein pointed out should, petitioner submits, be clarified and settled by reviewing this decision under a Writ of Certiorari;

Therefore, we submit that the Writ of Certiorari should be granted, and the decisions of the Court of Appeals of Georgia should be reversed.

Respectfully submitted,

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